

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT DELAWARE**

RICK LIEDER d/b/a DREAMPOOL STUDIO,

Plaintiff,

v.

NATURAL FORCES, LLC,

Defendant.

Case No.:

COMPLAINT AND JURY DEMAND

Plaintiff Rick Lieder d/b/a Dreampool Studio (“Plaintiff” or “Mr. Lieder”), by his undersigned attorneys, Duane Morris LLP, for his Complaint, alleges as follows:

SUBSTANCE OF THE ACTION

1. This is a case of willful copyright infringement in violation of 17 U.S.C. §§ 106(1), 501, and 1202. Plaintiff seeks compensatory and statutory damages in an amount to be established at trial.

PARTIES

2. Plaintiff Rick Lieder is an individual doing business under the name Dreampool Studio at 3653 Phillips Avenue, Berkley, Michigan 48072.

3. Upon information and belief, defendant Natural Forces, LLC (“Defendant”) is a limited liability company duly organized and existing under the laws of Delaware, with a principal place of business at 18535 Oldstatesville Road, Suite H, Cornelius, NC 28031-9390.

JURISDICTION AND VENUE

4. This is a civil action seeking damages and injunctive relief for copyright infringement under the copyright laws of the United States, and therefore this Court has

jurisdiction under 17 U.S.C. § 101 *et seq.*; 28 U.S.C. § 1331 (federal question jurisdiction), and 28 U.S.C. § 1338)(a) (jurisdiction over copyright actions).

5. Personal jurisdiction over Defendant is proper. Defendant is a Delaware limited liability company. Furthermore, Defendant has caused Plaintiff harm in this state and judicial district, including without limitation Defendant's copyright infringement.

6. Pursuant to 28 U.S.C. § 1391, venue properly lies in this Court because Defendant resides in this district.

FACTS COMMON TO ALL CLAIMS FOR RELIEF

A. Plaintiff's Business

1. Plaintiff is a professional photographer in Michigan, who, through his business, creates and licenses photographic images for various uses.

2. As a result of his talents, Mr. Lieder became a highly acclaimed wildlife photographer, the author of two picture books, and a wildlife filmmaker. Plaintiff's notable style and artistry make his photographs very popular and valuable.

3. Plaintiff created and holds exclusive copyright ownership of an iconic photograph of two sparrows with their wings spread in midflight (the "Copyrighted Work"). A true and accurate copy of the Copyrighted Work is attached hereto as Exhibit A.

4. The Copyrighted Work is an original work of authorship created by and belonging to Mr. Lieder.

5. On November 15, 2006, Plaintiff obtained a registration with the United States Copyright Office for a collection of photographic images titled, "Rick Lieder Art Volume 12," which included the Copyrighted Work. Attached hereto as Exhibit B is a copy of the certificate for Registration Number VAu 727-266 obtained from the United States Copyright Office.

B. Defendant's Unlawful Activities

6. Plaintiff recently discovered that Defendant has been infringing upon Plaintiff's exclusive copyright in the Copyrighted Work.

7. For example, Defendant has been reproducing, distributing, and publicly displaying the Copyrighted Work, without Plaintiff's authorization or permission, in furtherance of efforts to market and sell products, at the following website addresses owned and operated by the Defendant:

- <http://www.rejexit.com/images/id1.jpg>; and
- <http://www.rejexit.com/invisidye-bird-and-goose-repellent.php>

8. Screenshots demonstrating Defendant's unauthorized use (the "Infringing Works") are attached hereto as Exhibit C.

FIRST CLAIM FOR RELIEF
DIRECT COPYRIGHT INFRINGEMENT
(17 U.S.C. § 101 et seq.)

9. Plaintiff realleges the preceding paragraphs and incorporates them by reference as if fully set forth herein.

10. The Copyrighted Work is an original work of authorship, embodying copyrightable subject matter, subject to the full protection of the United States copyright laws.

11. Plaintiff is sole and exclusive owner of the copyrights, including the right to sue for infringement of the copyright in the Copyrighted Work.

12. Upon information and belief, as a result of Plaintiff's reproduction, distribution and public display of the Copyrighted Work, Defendant had access to the Copyrighted Work prior to the creation of Defendant's Infringing Works.

13. By reproducing, distributing and publicly displaying the Infringing Works, as described above, Defendant violated and infringed upon Plaintiff's exclusive rights in violation of the Copyright Act, 17 U.S.C. § 501.

14. Upon information and belief, Defendant's infringement of Plaintiff's copyright in the Copyrighted Work is willful and deliberate, and Defendant has profited at the expense of Plaintiff.

15. As a direct and proximate result of Defendant's infringement of Plaintiff's copyright and exclusive rights in the Copyrighted Work, Plaintiff is entitled to recover his actual damages from Defendant's illegal and improper uses of the Copyright Work, in an amount to be proven at trial. In addition, Plaintiff is entitled to recover damages based on the disgorgement of Defendant's profits resulting from its infringement of the Copyrighted Work, in an amount to be proven trial.

16. In the alternative, and at Plaintiff's election, Plaintiff is entitled to maximum statutory damages, pursuant to 17 U.S.C. § 504(c), in the amount of \$150,000 with respect to the infringing reproduction, distribution, and public display for the Copyrighted Work, or such other amounts as may be proper under 17 U.S.C. § 504(c).

17. Plaintiff is also entitled to his costs, including reasonable attorneys' fees, pursuant to 17 U.S.C. § 505.

18. Defendant's prior and continued infringing conduct has caused and will continue to cause irreparable injury to Plaintiff unless enjoined by this Court. Plaintiff has no adequate remedy at law. Pursuant to 17 U.S.C. § 502, Plaintiff is entitled to a permanent injunction prohibiting infringement of Plaintiff's exclusive rights under copyright law.

SECOND CLAIM FOR RELIEF
VIOLATION OF THE DIGITAL MILLENNIUM COPYRIGHT ACT
(17 U.S.C. § 1202)

19. Plaintiff realleges the allegations of the preceding paragraphs and incorporates them by reference as if fully set forth herein.

20. Defendant has, on information and belief, intentionally removed copyright management information included on Plaintiff's display and publication of the Copyrighted Work.

21. Upon information and belief, Defendant removed and/or altered copyright management information knowing or having reasonable grounds to know that such actions would conceal its infringement of Plaintiff's copyright.

22. Upon information and belief, Defendant's acts in violation of the Digital Millennium Copyright Act were and are willful.

23. By reason of Defendant's violations of the Digital Millennium Copyright Act, Plaintiff has sustained and will continue to sustain substantial injuries.

24. Further irreparable harm is imminent as a result of Defendant's conduct, and Plaintiff is without an adequate remedy at law. Plaintiff is therefore entitled to an injunction, in accordance with 17 U.S.C. § 1203(b), restraining Defendant, its officers, directors, agents, employees, representatives, assigns, and all persons acting in concert with Defendant from engaging in further violations of the Digital Millennium Copyright Act.

25. In lieu of Defendant's profits derived from its violations of the Digital Millennium Copyright Act or Plaintiff's actual damages, Plaintiff may elect to and is entitled to recover statutory damages in accordance with 17 U.S.C. § 1203(c)(3)(B).

26. Plaintiff is entitled to recover costs and attorneys' fees in accordance with 17 U.S.C. § 1203(b)(4) and (5).

WHEREFORE, Plaintiff demands judgment as follows:

1. A declaration that Defendant has infringed Plaintiff's copyright in the Copyrighted Work under the Copyright Act;
2. A declaration that such infringement is willful;
3. An award of such of actual damages and profits under 17 U.S.C. § 504(b) as the Court shall deem proper or, at Plaintiff's election, an award of statutory damages under 17 U.S.C. §§ 504(c) as the Court shall deem proper, including damages for willful infringement of up to \$150,000 for each Copyrighted Work infringed;
4. A declaration that Defendant has violated the Digital Millennium Copyright Act by intentionally removing copyright management information and/or intentionally providing and distributing false copyright management information to conceal infringement;
5. Awarding Plaintiff all gains, profits, property, and advantages obtained or derived by Defendant from its acts of copyright infringement and violations of the Digital Millennium Copyright Act or, in lieu thereof and at Plaintiff's election, such statutory damages as the Court shall deem proper under 17 U.S.C. § 1203(c)(3)(B), including damages up to \$25,000 for each violation of the Digital Millennium Copyright Act;
6. Awarding Plaintiff such exemplary and punitive damages as the Court finds appropriate to deter any future willful infringement;
7. Awarding Plaintiff its costs and disbursements incurred in this action, including its reasonable attorneys' fees, as provided in 17 U.S.C. §§ 505 and 1203(b)(5);

8. Awarding Plaintiff interest, including pre-judgment interest, on the foregoing sums;

9. Permanently enjoining Defendant, its employees, agents, officers, directors, attorneys, successors, affiliates, subsidiaries and assigns, and all those in active concert and participation with Defendant, from:

- (a) directly or indirectly infringing Plaintiff's copyright or continuing to market, offer, sell, dispose of, license, lease, transfer, publicly display, advertise, reproduce, develop or manufacture any works derived or copied from the Plaintiff's Copyrighted Work or to participate or assist in any such activity; and
- (b) directly or indirectly removing or altering any copyright management information from, or providing or distributing any false copyright management information in connection with, Plaintiff's Copyrighted Work.

10. For such other and further relief as the Court may deem just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury pursuant to Fed. R. Civ. P. 38.

Dated: November 30, 2015

Respectfully Submitted

DUANE MORRIS LLP

Steven M. Cowley*

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Boston, MA 02110-1724

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smcowley@duanemorris.com

**Pro Hac Vice* Application to be
submitted

/s/ Oderah C. Nwaeze

Oderah C. Nwaeze (I.D. No. 5697)

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*Attorneys for Plaintiff Rick Lieder d/b/a Dreampool
Studio*

EXHIBIT A



EXHIBIT B

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters

Register of Copyrights, United States of America

Short Form VA
For a Work of the Visual Arts
UNITED STATES COPYRIGHT OFFICE

REGISTRATION NUMBER

VAU 727 - 266



UNUS887272664

11.15.06
NOV 15 2006

Examined By

SPW

NOV 15 2006

Fee Received

TYPE OR PRINT IN BLACK INK. DO NOT WRITE ABOVE THIS LINE.

Correspondence ☐

Title of This Work:

1

Rick Lieder Art Volume 12

Alternative title or title of larger work in which this work was published:

Name and Address of Author and Owner of the Copyright:

2

Rick Lieder
3653 Phillips Ave.
Berkley MI 48072-3424

Nationality or domicile:
Phone, fax, and email:

Phone (248) 544-0404
Email rick@dreampool.com

Fax ()

Year of Creation:

3

2006

If work has been published, Date and Nation of Publication:

4

a. Date _____ (Month, day, and year all required)
Month Day Year

b. Nation _____

Type of Authorship in This Work:

5

Check all that this author created.

☐ 3-Dimensional sculpture
☒ 2-Dimensional artwork
☐ Technical drawing

☒ Photograph

☐ Jewelry design

☐ Map

☐ Text

Signature:

6

Registration cannot be completed without a signature.

I certify that the statements made by me in this application are correct to the best of my knowledge.* Check one:

☒ Author ☐ Authorized agent

X *[Signature]*

Name and Address of Person to Contact for Rights and Permissions:
Phone, fax, and email:

7

☒ Check here if same as #2 above.

Phone ()
Email

Fax ()

8

Certificate will be mailed in window envelope to this address:

Name ▼

Rick Lieder

Number/Street/Apt ▼

3653 Phillips Ave.

City/State/ZIP ▼

Berkley MI 48072-3424

Complete this space only if you currently hold a Deposit Account in the Copyright Office.

9

Deposit Account # _____

Name _____

DO NOT WRITE HERE

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EXHIBIT C

Rejex-It Bird Repellents | InvisiDye | Visible Bird and Goose Repellent - Mozilla Firefox

Rejex-It Bird Repellent... x +

www.rejexit.com/invisidy-bird-and-goose-repellent.php

Search



When do I apply InvisiDye?
You should apply InvisiDye in combination with Migrate, Feather Duster and other avian repellents. This allows the geese and birds to immediately associate the repellency of the products with the color.

Will InvisiDye alone deter geese and birds?
We have no studies showing grass, plants or landscaping treated with InvisiDye alone will deter feeding. InvisiDye is designed to be mixed with other nerve deterrents such as Migrate or other products containing methyl anthranilate and digestive deterrents such as Feather Duster.

How do I apply InvisiDye?
You simply mix InvisiDye into your spray tank with Migrate, Feather Duster or other avian repellents.

Does InvisiDye work on all birds?
InvisiDye can be seen by geese and any birds which can see between 200-400nm.

How long does InvisiDye last?
InvisiDye can be seen in the UV light spectrum for up to 2 weeks after application. However, InvisiDye does not translocate and new vegetative growth will not be covered.


Other Natural Forces Products

- **Bird Repellents**
 - o Fog Force Concentrate for Aerosol and Fogging
 - o Migrate - for Turf
 - o Migrate - for Agriculture
 - o Fog Force AR/TR - Ready-To-Use Aerosol
 - o Fragrance Fogger & Micro Fragrance Fogger
- **Insecticide, Miticide, Ovicide**
 - o SorbiShield 90
 - o SucraShield
 - o Bugitol, Nemitol & Dazitol

For more information, call 1-866-53-BIRDS (1-866-532-4737)

Natural Forces, LLC • PO Box 2801, Davidson, NC 28036-2801 • 866-532-4737 • eFax 704-973-7777

09 Display Size: 140x120px
09 Display Size: 140x120px
Legal Disclaimer



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Welcome to Rejex-it™

"To be effective, a chemical repellent must affect the way that the bird perceives the crop"


-Dr. Michael Avery, USGS/APHIS/WS-NWRC

InvisiDye


What is InvisiDye?
InvisiDye is a non lethal avian training tool that when teamed with Migrate and other bird repellents, teaches geese and birds to avoid treated grass, plants and landscaping.

How does InvisiDye work?
By Visually Training Birds to associate irritation with an area.
Geese and other birds can see ultra violet (UV) light waves (200-400nm) which allows them to see a portion of the light spectrum that is invisible to the human eye.

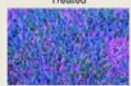
InvisiDye only visible below 400nm



Untreated



Treated



Treated turf looks unchanged to the human eye.
Birds see a clear difference in color, giving them a visual cue to 'Stay Away'.

Who uses InvisiDye?

Golf Courses	Home owners	Lawn Care companies
Horticulturalists	Property Management Firms	

Anyone who has a persistent bird problem such as geese or other birds which feed or roost in the same areas repeatedly.

InvisiDye™ FEATURES & BENEFITS


- Can be seen by Geese and birds which have a visual range between 200-400nm
- Works by giving Geese a visual warning to avoid treated areas.
- Apply in combination with Migrate™, Feather Duster or other avian repellents.

ORDER NOW

To learn more about InvisiDye™

Resources:
[Label](#)
[MSDS](#)
[Technical Bulletin](#)
[Frequently Asked Questions \(FAQs\)](#)

Case Studies and Research:
[Avian Repellents](#), Michael L. Avery
[Understanding Avian Vision, the Key to using Light](#), Bradley F. Blackwell
[Visual Pigments](#), N.S. Hart



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- **Bird Repellents**
 - Fog Force Concentrate for Aerosol and Fogging
 - Migrate - for Turf
 - Migrate - for Agriculture
 - Fog Force AR/TR - Ready-To-Use Aerosol
 - Fragrance Fogger & Micro Fragrance Fogger
- **Insecticide, Miticide, Ovicide**
 - SorbiShield 90
 - SucraShield
 - Bugitol, Nemitol & Dazitol

For more information, call 1-866-53-BIRDS (1-866-532-4737)

Natural Forces, LLC • PO Box 2601, Davidson, NC 28036-2601 • 866.532.4737 • ef@nf.com 704.673.7777

Legal Disclaimer:
 Repel-It products are intended for the purpose of putting distance between you and birds that may be infected with Avian Influenza H5N1. There is no guarantee that you will not contract the bird flu. Our products are not intended to protect you from contracting the bird flu. Our products are for repellent purposes. Repel-It products are not intended to cure the bird flu or treat the bird flu.

